IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFA No. 265 of 1997.

Judgement reserved on: 15.5.2007.

Date of decision: 12.6.2007.

Shyam Lal ….. **Appellant.**

Vs.

State of H.P. & ors. …. **Respondents.**

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The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : **Mr. S.S.Mittal, Sr. Advocate with Mr. Dev Raj, Advocate.**

For the Respondents : **Mr. M.L.Chauhan, Additional Advocate General.**

Kuldip Singh, Judge.

The petitioner- claimant is in appeal against the award dated 17.12.1996, passed by the District Judge, Kinnaur Sessions Division, Rampur Bushahr in Land Reference Case No. 242-R/4 of 1995/93, dismissing the land reference petition.

2. The facts in brief are that petitioner- claimant filed a petition, under Section 18 of the Land Acquisition Act, 1894 (for short, the Act) for enhancement of compensation of land, house of petitioner acquired for construction of Wazir Bowali Jhakri Road. The Notification, under Section 4 of the Act, was

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Whether the reporters of the local papers may be allowed to see the Judgment?

published in the official gazette on 27.5.1989, for acquiring the disputed land comprised in khasra No. 75 min, measuring 1 Biswa alongwith constructed house of the petitioner. The Collector announced the award on 25.10.1991. The Collector has awarded less compensation, both for the land and the house. The petitioner is entitled to market value of the land at the rate of Rs. 5,00,000/- per Bigha and of the house Rs. 1,50,000/- existed on the acquired land. He is also entitled to interest, solatium and other payments permissible under the Act.

3. The petition was contested by the Collector by filing reply, wherein it has been admitted that 1 Biswa land alongwith house situate on khasra No. 75 min of the petitioner was acquired for construction of Wazir Bowali Jhakri Road. The market value of the acquired land and house has been assessed in accordance with law. The District Judge, has framed the following issues:-

1. Whether the Land Acquisition Collector has inadequately assessed the market value of the acquired property, if so, its effect? OPP.

2. In case issue No. 1 is proved in the affirmative, to what amount of enhanced compensation the petitioner is entitled? OPP.

3. Relief.

4. The issue No.1 has been answered against the petitioner and consequently issue No.2, has also been decided against the petitioner. The District Judge, ultimately dismissed the reference petition. The petitioner- claimant, is, therefore, in appeal.

5. I have heard the learned counsel for the parties and have also gone through the record.

6. PW 1 Shyam Lal has deposed that he purchased in 1985 1 Biswa land from Kaushalya Devi, vide sale deed Ex. P-1. The classification of land was Kiyar Doem. He constructed house on this land, which was acquired in the year 1989. The average price of the land in the year 1989 was Rs. 1,50,000/- per Bigha. He has been given inadequate compensation for the land and the house constructed on this land. He had spent Rs. 1,50,000/- on the construction of the house. He has proved agreement Ex. P 3 dated 31.12.1991 for purchasing 2½ Bishwas land for Rs. 50,000/-. PW 3 Janak Dev Patwari has proved jamabandi Ex. P-2. PW 4 Manohar Lal, Draftsman has proved plan Ex. PW 4/A of the house of petitioner.

7. RW 1 Nand Lal Sharma, Executive Engineer has proved abstract of cost of retaining wall Ex. RW 1/A and another abstract of cost again Ex. RW 1/A, evaluation of house of Shyam Lal Ex. RW 1/B with details of measurement of retaining wall again Ex. RW 1/B, approval of Rs. 61,355/- vide Ex. RW 1/C, details of material of extra cost of house of Shyam Lal Ex. RW 1/D, extra cost of material acquired for house of Shyam Lal Ex. RW 1/E, copy of house plan Ex. RW 1/F. RW 2 K.C. Kaushal, Junior Engineer has corroborated the statement of RW 1 Nand Lal Sharma, on material particulars.

8. The Collector has awarded Rs. 535.86 to the petitioner for land and Rs. 61,355/- on account of cost of the house. The petitioner purchased the acquired land measuring 1 Biswa, vide sale deed Ex. P-1 for a consideration of Rs. 4000/- on 17.6.1985.

According to RW 1, the estimate of the house has been prepared on the basis of 1987 schedule of rates and increase in cost of material Rs. 7573/- and labour Rs.8868/- has been taken into consideration up to the financial year 1988-89 for assessing the value of the house of the petitioner.

9. The petitioner for assessing the market value of acquired land has relied agreement Ex. P-3 dated 31.12.1991. In agreement Ex. P-3, rate of land has been shown Rs. 20,000/-, per Biswa. The Ex. P-3 is dated 31.12.1991, whereas Notification, under Section 4 for acquiring the land was published on 27.5.1989. Therefore, agreement Ex. P-3, dated 31.12.1991, cannot be relied for assessing the market value of the acquired land. The possibility cannot be ruled out that agreement Ex. P-3, has been purposely executed to enhance the market value of the acquired land, structure.

10. The land which was purchased by the petitioner, vide sale deed Ex. P-1, dated 17.6.1985 for a consideration of Rs. 4000/- and acquired under Notification dated 27.5.1989 has been surprisingly assessed for purposes of market value at Rs. 535.86 in the award dated 25.10.1991 of the Collector. The market value of the acquired land at the time of the Notification under Section 4 of the Act, cannot be less than the market value of this land when it was purchased vide sale deed Ex. P-1. The acquired land was purchased by the petitioner for construction of the house and in fact house was constructed by him on this land later on. It is common knowledge that there is trend of increase in price of the land for house construction. The acquired land is just 1 Biswa, therefore, it can be

safely presumed that from the date of purchase of acquired land on 17.6.1985 and the date of publication of the Notification, under Section 4 of the Act, on 27.5.1989, the market price of the acquired land must have been increased by 50%. Therefore, the market value of the acquired land on the date of Notification on 27.5.1989 is assessed at Rs. 6,000/- as against Rs. 535.86 assessed by Collector and confirmed by the District Judge. RW-1 and RW-2 have proved the valuation of the house of the petitioner at Rs. 61,355/-, which includes increase in cost of labour and material up to the financial year 1988-89. The Notification, under Section 4 of the Act, was published on 27.5.1989. Thus the assessment of the house of the petitioner made by RW 1 and RW 2 is up to date. The petitioner has not rebutted this evidence by an expert. Therefore, no fault can be found with the valuation of the house taken at Rs. 61,355/-. The respondent has wrongly deducted income tax amounting to Rs. 1794.84 from the compensation assessed, as 12% increase paid under Section 23(1-A) of the Act, is not an interest but an addition to the market value of the land. Therefore, this amount is not liable to deduction.

11. As a result of the above discussion the market value of 1 Biswa acquired land of the petitioner and the market value of the house of the petitioner existed on the acquired land is assessed to Rs. 61,355 + Rs. 6,000 = Rs. 67,355/-. The petitioner is entitled to 12% increase on Rs. 67,355/- from 27.5.1989 the date of publication of Notification under Section 4 of the Act, to 25.10.1991 under Section 23(1-A) of the Act, solatium at the rate of 30% on the market

value assessed above. He is also entitled to 9% per annum interest on the enhanced compensation for one year from the date of the award dated 25.10.1991 to 25.10.1992, and thereafter at the rate of 15% per annum till the amount awarded is paid/ deposited in the Court. The impugned award is modified accordingly.

12. The net result of the above discussion is the appeal is partly allowed. The impugned award is modified to the effect that market value of 1 Biswa acquired land and the market value of the house of the petitioner existed on the acquired land is assessed to Rs. 61,355 + Rs. 6,000 = Rs. 67,355/-. The petitioner is held entitled to 12% increase on Rs. 67,355/- from 27.5.1989 the date of publication of Notification under Section 4 of the Act to 25.10.1991 under Section 23(1-A) of the Act and solatium at the rate of 30% on the market value assessed above. He is also entitled to 9% per annum interest on the enhanced compensation for one year from the date of the award dated 25.10.1991 to 25.10.1992, and thereafter at the rate of 15% per annum till the amount awarded is paid/ deposited in the Court. No costs.

June 12, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**